

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ANTON MCSWAIN,)	CASE NO. 3:05 CV 1953
)	
Petitioner,)	JUDGE CHRISTOPHER A. BOYKO
)	
v.)	
)	
JAMES TELB,)	<u>MEMORANDUM OF OPINION</u>
)	<u>AND ORDER</u>
Respondent.)	

On August 8, 2005, petitioner pro se Anton McSwain filed the above-captioned petition for writ of habeas corpus under 28 U.S.C. § 2254. McSwain is confined in an Ohio penal institution, having been convicted in April 2005 of non-support of dependants. For the reasons stated below, the petition is denied and this action dismissed pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). In addition, a petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b).

It appears evident on the face of the petition that petitioner has not yet sought review of his conviction in the Ohio Supreme Court. Such review may be available, see Ohio Sup.Ct.R.P. II, sec. 2(A)(4)(a), and must be sought in order to exhaust state

court remedies. Rust v. Zent, 17 F.3d 155, 160 (6th Cir. 1994).

Accordingly, the petition is denied and this action is dismissed pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed. R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.

09/20/05
Date

/s/ Christopher A. Boyko
CHRISTOPHER A. BOYKO
UNITED STATES DISTRICT JUDGE
Original Signature on File